

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8098 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHBHAI VENABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner
MR HH PATEL, AGP, for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/12/1999

ORAL JUDGEMENT

1. The petitioner is detained by virtue of an order passed by the Joint Secretary, Food & Civil Supplies Department, Government of Gujarat, on September 7, 1999 in exercise of powers u/s 3[1] of the Prevention of Black

Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as 'the PBM Act' for short]. The grounds of detention of the even date indicate that irregularities were detected in stock of the LPG. The authority found that the activities of the petitioner were capable of disrupting the smooth supply of the essential commodities and therefore, it was necessary to immediately prevent him from continuing his activities and for that purpose, detention was required to be resorted to. The authority also considered the possibility of resorting to less drastic remedy, but ultimately concluded that it is not possible as the same may not prove to be equally efficacious.

2. The petitioner challenges the detention order on various grounds. One ground is that the representation made to the Central Government on September 30, 1999 was considered late on 14th October 1999. It is contended that the time was consumed by the Central Government for calling for the parawise comments from the State Government. This action is challenged on two counts. One that there was no need for calling for the comments as the State Government must have made a report to the Central Government within stipulated time of the date of detention order and secondly, on the ground that the parawise remarks were called for, not by the authorised officer and therefore, action of calling for the parawise remarks was without application of mind. The representation was dealt with in a routine and casual manner and therefore, the continued detention would be rendered illegal. It is also contended that certain copies which were supplied to the detenu at the time of detention were not legible. The same were demanded by making a representation and therefore also, the detention would stand vitiated.

3. Mr. Thakkar, learned counsel appearing for the petitioner, submitted at the outset that a petition of a co-detenu who happened to be the partner of the present petitioner has been allowed by this Court on 10th December, 1999 being Special Civil Application No. 8093/99. He submitted that the present petition is based on identical facts and the grounds of challenge are also identical. The dates of representation and consideration of the representation are also the same. In this view of the matter, he submits that the petition may be allowed. He submitted further that there is a delay in passing the order also and there is a ground of non-supply of legible documents, which would also vitiate the detention.

4. Mr.H.H.Patel, learned AGP appearing for respondents No.1 and 2 submitted that there is no delay in passing the order. The affidavit in reply explained how the time was consumed in decision making. He has pressed into service the decision in the case of Abedin Rasul Bombaywala v/s Commissioner of Police, Surat & ors. as reported in 1986 GLH 1986 and has relied on head note 'B' and 'C'. He has also placed reliance on the decision in the case of Osmanali Khataki v/s Commissioner of Police, Rajkot as reported in 1994[1] GLH 512.

5. Ms. Davawala learned advocate appearing for the respondent No.3 has also opposed the petition. She has placed reliance on the affidavit in reply.

6. Adverting to the rival side arguments, the first contention that requires consideration is, whether the representation made to the Central Government was considered in time or was it a delayed consideration. Undisputedly, the representation dated September 30, 1999 made by the advocate of the detainee, was received by the Central Government on October 4, 1999. The parawise comments of the State Government, on the representation of the detainee, were called for vide telegram dated October 10, 1999. The comments were received on October 12, 1999 from the State Government, vide letter dated October 7, 1999 and the representation was decided by the competent authority in the Central Government on October 14, 1999. These facts emerge from the affidavit in reply filed by the Under Secretary in the Department of Consumers Affairs, Ministry of Food & Consumer Affairs, New Delhi.

7. This action on part of the Central Government is assailed on two counts. The first is that there was no need for the Central Government to call for parawise remarks. This argument is based on the fact that the order of detention was passed on September 7, 1999 and by virtue of provision of section 3[4] of the PBM Act, the State Government was required to make a report to the Central Government within seven days of making of the order by the State Government. It is nobody's case that such report was not made by the State Government to the Central Government within the stipulated time and therefore, the necessary presumption is that the report was made by the State Government to the Central Government within seven days of passing of the order which was passed on September 7, 1999 and therefore, it can be presumed that it must have been made before September 14, 1999. Therefore, it can safely be inferred that, on October 4, 1999, when the representation was

received, the Central Government already had a report of the State Government on the question and therefore, there was no need to call for the parawise comments. Why this was done is not explained in the affidavit in reply. The action of the Central Government of calling for the parawise remarks has resulted into delay in taking decision on the representation and therefore, it would vitiate the continued detention.

7.1 The another aspect that requires consideration is whether the parawise comments were called for, by the Central Government, at the behest of or under the instruction of the competent officer authorised to decide the representation. If that is not done, there is non-application of mind by the competent authority at the stage of calling for parawise comments while considering the representation. To put it differently, the parawise comments were called for without any consideration by the competent authority, by a person not authorised to deal with the representation, in a routine manner. The affidavit in reply filed by the central Government does not clarify as to at whose instance the parawise remarks were called for and whether the competent authority did consider the need for calling for the parawise remarks.

8. In view of the decision of the apex Court in the case of R. Paulswamy v/s Union of India and another as reported in 1999 [4] SCC 415, if parawise remarks were not called for at the instance of the competent officer, it would indicate that the representation was dealt with in a routine manner and that, there was non-application of mind on part of the competent officer as to whether it was necessary to call for the comments of the sponsoring authority. The continued detention, therefore, would be rendered illegal. In this view of the matter, the petition deserves to be allowed.

9. At this stage, Mr. Thakkar, learned counsel for the petitioner, does not press for a decision on other points raised by him during the course of arguments.

10. The petition is therefore allowed. The impugned order of detention is hereby quashed and set aside. The detenu - Kamleshbhai Venabhai Patel, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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